



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 13 April 2026

Case No. 2022-036448

In the matter between:

HITJEVI OBAFEMI TJIROZE

Applicant

and

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

First Respondent

JOHANNESBURG SOCIETY OF ADVOCATES

Second Respondent

CORAM: MIA J and WILSON J

JUDGMENT

WILSON J (with whom MIA J agrees):

- 1 On 10 August 2023, the applicant, Mr. Tjiroze, applied to this court for admission as an advocate. On 18 August 2023, Wright J (with whom Wepener J agreed), refused that application. Mr. Tjiroze relied upon section 115 of the Legal Practice Act 28 of 2014, which provides that section 3 of the Admission of Advocates Act 74 of 1964 will continue to apply to those who would have been entitled to admission in its terms on or before 31 October 2018. There

were, accordingly, two principal issues Wright J had to decide. First, Wright J had to decide whether, as at 31 October 2018, Mr. Tjiroze was “duly qualified” within the meaning of section 3 (1) (b) of the Admission of Advocates Act 74 of 1964. Second, Wright J had to satisfy himself that Mr. Tjiroze was “a fit and proper person” to be admitted as an advocate, as required by section 3 (1) (a) of the Admission of Advocates Act. Since fitness to practice is a continuing requirement, Mr. Tjiroze had to show both that he was a fit and proper person on 31 October 2018, and that he remained fit and proper at the time of his application for admission.

2 Wright J found that Mr. Tjiroze was neither duly qualified nor fit and proper to be admitted as an advocate. In relation to Mr. Tjiroze’s qualifications, Wright J found that Mr. Tjiroze had failed to show, as section 3 (2) (a) (ii) of the Admission of Advocates Act requires, that “a faculty of law ha[d] certified that the syllabus and standard of instruction” he underwent to gain his three-year B Juris degree from the University of Namibia “are equal or superior to those required for the [LLB at] a university in the Republic [of South Africa]”.

3 Wright J considered material placed before him by a Dr. Mongalo of the Wits Law School and by a Ms. Ferndale, the Registrar of the Independent Institute of Education / Monash South Africa (“IIE MSA”). That material, on its face, certified that Mr. Tjiroze’s B Juris degree was either the equivalent of a two-year LLB at Monash University, or counted towards some of the credits necessary to obtain that degree. That ambiguity aside, Wright J held that neither Dr. Mongalo nor Ms. Ferndale had provided the required certification – neither of them had said, in terms, that the syllabus and standard of

instruction leading to the award of Mr. Tjiroze's B Juris degree "are equal or superior to those required for the [LLB at] a university in the Republic".

- 4 On Mr. Tjiroze's fitness to be admitted, Wright J held that Mr. Tjiroze had failed adequately to address findings that the Constitutional Court had made against him in *Tjiroze v Appeal Board of the Financial Services Board* [2020] ZACC 18 (21 July 2020). In that case, the Constitutional Court found that Mr. Tjiroze had committed an abuse of process in his pursuit of an application for leave to appeal before that court, and had made defamatory remarks about a Judge of this court.
- 5 Wright J accepted that Mr. Tjiroze expressed contrition for at least some of the conduct criticised by the Constitutional Court. However, Wright J held that, in dealing with the opposition to his admission application advanced by the first respondent, the LPC, Mr. Tjiroze had demonstrated both that he had failed to appreciate the full import of the Constitutional Court's criticisms, and that he had again engaged in the same sort of inappropriate conduct of which the Constitutional Court had disapproved. In those circumstances, Wright J held that Mr. Tjiroze was not a fit and proper person to be admitted as an advocate. His admission application was refused (see *Tjiroze v South African Legal Practice Council* [2023] ZAGPJHC 984 (18 August 2023)).
- 6 Aggrieved, Mr. Tjiroze applied for leave to appeal against that refusal. Wright J (with whom Wepener J agreed) dismissed that application. Renewed applications for leave to appeal were also dismissed by the Supreme Court of Appeal and the Constitutional Court.

- 7 Undeterred, Mr. Tjiroze now applies to us to rescind the order refusing his admission application. In doing so, he makes a straightforward mistake. He attacks the conclusions reached by Wright J and Wepener J in substantially the same terms as he advanced in his failed applications for leave to appeal.
- 8 Rescission is a wholly different remedy from appeal, and it will seldom be appropriate to advance a rescission application on the same grounds as an appeal was advanced against the same order. An appeal is a full rehearing of the merits of a lower court's decision. A rescission application is triggered by a problem with the way that decision was reached. The remedies are usually mutually exclusive, because an order that is susceptible to rescission lacks the finality usually required to pursue an appeal (see *Pitelli v Evaton Gardens Projects* CC 2010 (5) SA 171 (SCA), paragraph 20).
- 9 Nevertheless, in exceptional cases, the remedies have been known to overlap, usually where an error in procedure has bled in to a court's reasoning, meaning that a court's judgment can be assailed both because it is alleged to be wrong on the merits and because it resulted from a defective process (see, for example, *Tshivhase Royal Council v Tshivhase* 1992 (4) SA 852 (A) at 865 A-C; *Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* [2010] 4 All SA 54 (SCA), paragraph 1). In those cases of overlap, though, reconsideration of the order on appeal resolves all of the issues that might be raised in a rescission application, and *vice versa*. Once one remedy is exhausted, there is nothing left of the other.
- 10 Assuming in Mr. Tjiroze's favour that the errors he alleged on appeal would also have grounded a rescission application, his case has already been

evaluated and rejected by three courts of appeal, meaning that it is impossible for him now to repackage the same arguments for the purposes of a rescission application. In other words, Mr. Tjiroze's challenge to Wright J's decision is *res judicata*, and cannot be revived by way of a rescission application.

11 Even if we were to overlook Mr. Tjiroze's failed appeals, nothing Mr. Tjiroze says in his application justifies rescinding Wright J's order. Generally speaking, a court will only rescind an order that has been granted in the absence of a party affected by it, and which was erroneous or which that party otherwise has good cause to set aside; an order that was taken by common mistake; an order that bespeaks a patent error or omission that could not have been intended by the Judge who issued it; or an order obtained by fraud or as a result of excusable error committed by one of the parties. The point of rescinding an order is that something went so wrong with the procedure by which the order was obtained that the case in which the order was granted cannot be said to have been fully and properly ventilated at first instance. Problems of that nature justify the court of first instance rather than an appeal court setting aside or correcting the order, because appeal courts generally only reconsider the merits of cases argued fully and properly at first instance.

12 None of those types of problems affect the order issued in Mr. Tjiroze's case. In the first place, Mr. Tjiroze was both physically present and represented by an attorney and an advocate when his admission application was argued. Mr Tjiroze is critical of the quality of his representation. He says that it was so bad that he might as well have been absent from court altogether. At first blush, it seems to me that Mr. Tjiroze's criticisms of his representation are wholly

unsubstantiated, but I need not evaluate them in any detail. Figurative absence of the sort Mr. Tjiroze complains is not the sort of absence that the principles governing rescission under the common law, rule 42 (1) (a) or rule 31 (2) (b) of the Uniform Rules of Court was meant to cover. What is meant by absence, or non-appearance, under those principles is that a litigant “was excluded from proceedings, or . . . not afforded a genuine opportunity to participate on account of the proceedings being marred by procedural irregularities” (see *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State* 2021 (11) BCLR 1263 (CC), paragraph 61). There can be no serious suggestion that Mr. Tjiroze was absent in that sense.

13 This leaves only the possibility of rescission under rule 42 (1) (b) or 42 (1) (c) or rescission on the basis that the order was obtained by fraud or as a result of excusable error. Rule 42 (1) (b) provides for the correction of “an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission”. During argument, Mr. Tjiroze suggested that the court order refusing him admission fails to set out what he must do now if he wants to practice as an advocate.

14 Wright J was under no obligation to address that issue, but a future path to admission for Mr. Tjiroze is clear enough from the order read in light of the reasons Wright J gave for it: Mr. Tjiroze must obtain a South African LLB degree, or certification that the B Juris he has obtained is equivalent to a South African LLB. He must also do what is necessary to show that, notwithstanding the serious findings made against him by both this court and the Constitutional

Court, he is a fit and proper person to be admitted as an advocate. Mr. Tjiroze needs to be able to show that he has the temperament and the judgement necessary to enable a court to trust him to argue matters before it. The findings made against Mr. Tjiroze are inconsistent with the conclusion that Mr. Tjiroze possesses these qualities. Mr. Tjiroze would be well-advised to cultivate the insight necessary to appreciate why the Constitutional Court and this court reached the conclusions they did. I think that entails a period of reflection on Mr. Tjiroze's part, and perhaps a spell doing something other than participating in litigation. But that is obviously entirely a matter for him.

15 There can be no suggestion that Mr. Tjiroze was refused admission as a result of a mistake common to the parties. No such mistake was identified before us. Mr. Tjiroze spent some time setting out the respects in which he believes the order refusing his admission application was mistaken, but that is obviously not enough.

16 There is, finally, no suggestion that the order refusing Mr. Tjiroze's admission was obtained by fraud, or as a result of some excusable error on his part. That exhausts all but perhaps the most exotic grounds on which a judgment may be rescinded, none of which are in evidence on the papers. We are satisfied that the rescission application must fail.

17 That conclusion having been reached, the respondents are entitled to their costs. Indeed, the general rule is that professional bodies such as the respondents are entitled to costs on the attorney and client scale, whatever the outcome of their approach to court. This general rule recognises the important role the respondents play in enabling the court to fairly discharge its

disciplinary functions (see, for example, *Law Society of the Northern Provinces v Dube* [2012] 4 All SA 251 (SCA), paragraph 33).

18 Mr. Tjiroze has sustained several costs orders against him because he has litigated repetitively and unwisely on a series of issues in connection with which he had no realistic prospect of success. The costs orders he sustained were no doubt made partly to discourage him from further frivolous litigation. This litigation was also frivolous, since it sought no more than to repackage a failed appeal into a meritless rescission application. An appropriate costs order must follow.

19 Accordingly, the application is dismissed with costs on the scale as between attorney and client.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson, with whom Judges Mia and Smit agree. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 13 April 2026.

HEARD ON: 16 March 2026

DECIDED ON: 13 April 2026

For the Applicant: H Tjiroze in person

For the First Respondent: M Steenkamp
Instructed by Rooth and Wessels Inc

For the Second Respondent: B Gilbert SC
(Heads of argument drawn by B Gilbert SC and N Deeplal)
Instructed by Webber Wentzel